

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WILLIAM M. ESTEY, JR.,

Petitioner,

v.

JEFF PREMO and STATE OF OREGON,

Respondent.

Case No. 6:12-cv-01430-CL

ORDER

Aiken, Chief Judge:

Magistrate Judge Clarke filed his Findings and Recommendation on October 18, 2013, recommending that the petition for writ of habeas corpus be denied and the case be dismissed. Specifically, Magistrate Judge Clarke found that petitioner's double jeopardy claim was precluded by a state court decision entitled to deference, and that petitioner's due process claim was barred by the failure to exhaust and procedural default. 28 U.S.C. §

2244(d)(1). Magistrate Judge Clarke also found that a certificate of appealability should not issue in the event of appeal. The matter is now before me. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Petitioner has filed timely objections to the Findings and Recommendation. I have, therefore, given de novo review of Judge Clarke's rulings.

I agree that the state court's decision regarding petitioner's double jeopardy claim is entitled to deference, and that petitioner failed to exhaust his due process claim. Woodford v. Visciotti, 537 U.S. 19, 24-25 (2003) (per curiam); O'Sullivan v. Boerckel, 526 U.S. 838, 844-45 (1999). However, I will grant a certificate of appealability regarding his double jeopardy claim if petitioner elects to appeal this decision.

Therefore, IT IS HEREBY ORDERED that Magistrate Judge Coffin's Findings and Recommendation (doc. 28) filed October 18, 2013 is ADOPTED, in part. The Petition for Writ of Habeas Corpus (doc. 2) is DENIED, and this case is DISMISSED. However, should petitioner appeal, a certificate of appealability shall be granted as to his

double jeopardy claim. See 28 U.S.C. § 2253(c)(2). Petitioner fails to make a substantial showing of the denial of a constitutional right as to his due process claim.

IT IS SO ORDERED.

Dated this 18 day of December, 2013.

A handwritten signature in cursive script, appearing to read "Ann Aiken", is written over a horizontal line.

Ann Aiken
United States District Judge